

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

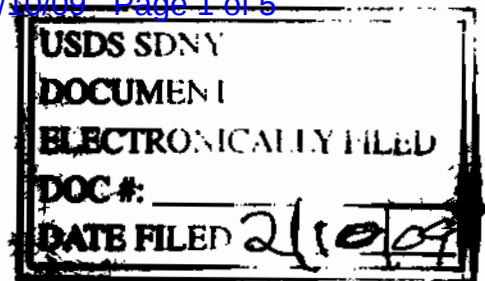
- against -

RAYMOND PASTURES

Defendant.

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NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE



MEMORANDUM & ORDER

06 CR. 832 (NRB)

On December 24, 2008, defendant filed a "Motion for Permanent Injunction Modification [sic] of Restitution," and on January 24, 2009, defendant filed a "Motion for Status Report Concerning Motion for Permanent Injunctive Relief Concerning Restitution." In the first motion, defendant requested that his restitution order be modified so that he would not have to make payments toward it until after he was released from prison. In his second, he cites his Amended Judgment, which requires him to pay 10% of his gross earnings after his release from prison toward his restitution, as evidence of the Court's intent to absolve him from making such payments while incarcerated.

While defendant is correct that the order requires him to pay 10% of his gross earnings after release from prison toward his restitution, it gives no instructions as to what percentage

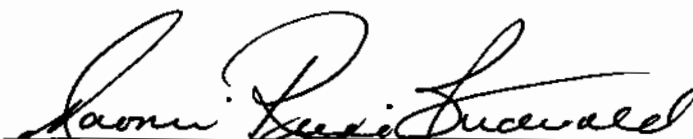
of his pay should be deducted while he is incarcerated. Beneath the section of the Amended Judgment which refers to restitution payments, it reads: "Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment." No such express order has been made here.

Chapter 28 of the Code of Federal Regulations section 545.10 and 545.11 governs defendant's financial responsibilities while incarcerated. Attached to this Memorandum and Order is a copy of those provisions. Generally, it is the responsibility of the Bureau of Prisons staff to determine repayment plans. We do not believe that any showing has been made that any obligation imposed by prison officials is so extraordinary as to warrant interference with Bureau of Prisons procedures.

Consequently, we are denying both of defendant's motions.

SO ORDERED

Dated: New York, New York
February 10, 2009


NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

A copy of the foregoing Order has been mailed on this date to the following:

Daniel W. Levy, Esq.
Assistant United States Attorney
One Saint Andrew's Plaza
New York, NY 10007

Raymond Pastures
FCI Ford Dix
P.O. Box 2000 West
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with library services necessary for educational, cultural, and leisure activities. The Warden shall ensure that the inmate library has a wide variety of reading materials. Library services shall ordinarily be available to all inmates daily, including evenings and weekends, except in detention facilities where service shall be scheduled as frequently as possible to ensure reasonable access.

[46 FR 24900, May 1, 1981]

§ 544.101 Procedures.

(a) The Warden shall assign a staff member (ordinarily the Supervisor of Education) responsibility for the inmate library.

(b) The inmate library shall offer an inmate a variety of reading materials, including, but not limited to, periodicals, newspapers, fiction, non-fiction, and reference books.

(c) Where the population of an institution includes inmates of foreign origin, staff shall attempt to provide reading materials in the inmates' language.

(d) Inmate library services shall be made available to inmates in special housing units.

(e) The Warden or designee may authorize the use of inmates as library assistants.

[46 FR 24900, May 1, 1981]

PART 545—WORK AND COMPENSATION

Subpart A [Reserved]

Subpart B—Inmate Financial Responsibility Program

Sec.
545.10 Purpose and scope.
545.11 Procedures.

Subpart C—Inmate Work and Performance Pay Program

545.20 Purpose and scope.
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545.24 Inmate work conditions.
545.25 Eligibility for performance pay.
545.26 Performance pay provisions.
545.27 Inmate vacations.
545.28 Achievement awards.
545.29 Special awards.

Funds due deceased inmates.
Training.

Subpart D [Reserved]

PRIORITY: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3621, 3622, 3624, 3663, 4001, 4042, 4061, 4082, 4083, 4084, 4085, 4086, 4087, 4088, 4089, 4090, 4091, 4092, 4093, 4094, 4095, 4096, 4097, 4098, 4099, 4100, 4101, 4102, 4103, 4104, 4105, 4106, 4107, 4108, 4109, 4110, 4111, 4112, 4113, 4114, 4115, 4116, 4117, 4118, 4119, 4120, 4121, 4122, 4123, 4124, 4125, 4126, 4127, 4128, 4129, 4130, 4131, 4132, 4133, 4134, 4135, 4136, 4137, 4138, 4139, 4140, 4141, 4142, 4143, 4144, 4145, 4146, 4147, 4148, 4149, 4150, 4151, 4152, 4153, 4154, 4155, 4156, 4157, 4158, 4159, 4160, 4161, 4162, 4163, 4164, 4165, 4166, 4167, 4168, 4169, 4170, 4171, 4172, 4173, 4174, 4175, 4176, 4177, 4178, 4179, 4180, 4181, 4182, 4183, 4184, 4185, 4186, 4187, 4188, 4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4197, 4198, 4199, 4200, 4201, 4202, 4203, 4204, 4205, 4206, 4207, 4208, 4209, 4210, 4211, 4212, 4213, 4214, 4215, 4216, 4217, 4218, 4219, 4220, 4221, 4222, 4223, 4224, 4225, 4226, 4227, 4228, 4229, 4230, 4231, 4232, 4233, 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Subpart A [Reserved]

Subpart B—Inmate Financial Responsibility Program

56 FR 23477, May 21, 1991, unless otherwise noted.

545.10 Purpose and scope.

The Bureau of Prisons encourages sentenced inmate to meet his or her legitimate financial obligations. As part of the initial classification process, staff will assist the inmate in developing a financial plan for meeting his obligations, and at subsequent program reviews, staff shall consider the inmate's efforts to fulfill those obligations as indicative of that individual's acceptance and demonstrated level of responsibility. The provisions of this rule apply to all inmates in federal facilities, except: Study and observation cases, pretrial detainees, and inmates in holdover status pending designation.

545.11 Procedures.

When an inmate has a financial obligation, unit staff shall help that inmate develop a financial plan and shall monitor the inmate's progress in meeting that obligation.

(a) *Developing a financial plan.* At initial classification, the unit team shall review an inmate's financial obligations, using all available documentation, including, but not limited to, the Presentence Investigation and the Judgment and Commitment Order(s). The financial plan developed shall be documented and will include the following obligations, ordinarily to be paid in the priority order as listed:

(1) Special Assessments imposed under 18 U.S.C. 3013;

- (2) Court-ordered restitution;
- (3) Fines and court costs;
- (4) State or local court obligations; and
- (5) Other federal government obligations.

(b) *Payment.* The inmate is responsible for making satisfactory progress in meeting his/her financial responsibility plan and for providing documentation of these payments to unit staff. Payments may be made from institution resources or non-institution (community) resources. In developing an inmate's financial plan, the unit team shall first subtract from the trust fund account the inmate's minimum payment schedule for UNICOR or non-UNICOR work assignments, set forth in paragraphs (b)(1) and (b)(2) of this section. The unit team shall then exclude from its assessment \$75.00 a month deposited into the inmate's trust fund account. This \$75.00 is excluded to allow the inmate the opportunity to better maintain telephone communication under the Inmate Telephone System (ITS).

(1) Ordinarily, the minimum payment for non-UNICOR and UNICOR grade 5 inmates will be \$25.00 per quarter. This minimum payment may exceed \$25.00, taking into consideration the inmate's specific obligations, institution resources, and community resources.

(2) Inmates assigned grades 1 through 4 in UNICOR ordinarily will be expected to allot not less than 50% of their monthly pay to the payment process. Any allotment which is less than the 50% minimum must be approved by the Unit Manager. Allotments may also exceed the 50% minimum after considering the individual's specific obligations and resources.

(c) *Monitoring.* Participation and/or progress in the Inmate Financial Responsibility Program will be reviewed each time staff assess an inmate's demonstrated level of responsible behavior.

(d) *Effects of non-participation.* Refusal by an inmate to participate in the financial responsibility program or to comply with the provisions of his financial plan ordinarily shall result in the following:

(1) Where applicable, the Parole Commission will be notified of the inmate's failure to participate;

§ 545.20**28 CFR Ch. V (7-1-08 Edition)**

(2) The inmate will not receive any furlough (other than possibly an emergency or medical furlough);

(3) The inmate will not receive performance pay above the maintenance pay level, or bonus pay, or vacation pay;

(4) The inmate will not be assigned to any work detail outside the secure perimeter of the facility;

(5) The inmate will not be placed in UNICOR. Any inmate assigned to UNICOR who fails to make adequate progress on his/her financial plan will be removed from UNICOR, and once removed, may not be placed on a UNICOR waiting list for six months. Any exceptions to this require approval of the Warden;

(6) The inmate shall be subject to a monthly commissary spending limitation more stringent than the monthly commissary spending limitation set for all inmates. This more stringent commissary spending limitation for IFRP refugees shall be at least \$25 per month, excluding purchases of stamps, telephone credits, and, if the inmate is a common fare participant, Kosher/Halal certified shelf-stable entrees to the extent that such purchases are allowable under pertinent Bureau regulations;

(7) The inmate will be quartered in the lowest housing status (dormitory, double bunking, etc.);

(8) The inmate will not be placed in a community-based program;

(9) The inmate will not receive a release gratuity unless approved by the Warden;

(10) [Reserved]

(11) The inmate will not receive an incentive for participation in residential drug treatment programs.

[56 FR 23477, May 21, 1991, as amended at 59 FR 15825, Apr. 4, 1994; 59 FR 16406, Apr. 6, 1994; 59 FR 53345, Oct. 21, 1994; 60 FR 240, Jan. 3, 1995; 61 FR 91, Jan. 2, 1996; 64 FR 72799, Dec. 28, 1999]

Subpart C—Inmate Work and Performance Pay Program

SOURCE: 49 FR 38915, Oct. 1, 1984, unless otherwise noted.

§ 545.20 Purpose and scope.

(a) The Bureau of Prisons operates an inmate work program within its insti-

tutions. To the extent practicable, the work program:

(1) Reduces inmate idleness, while allowing the inmate to improve and/or develop useful job skills, work habits, and experiences that will assist in post-release employment; and

(2) Ensures that activities necessary to maintain the day-to-day operation of the institution are completed. Sentenced inmates who are physically and mentally able to work are required to participate in the work program. When approved by the Warden or designee, drug treatment programming, education, or vocational training may be substituted for all or part of the work program.

(b) The Warden may recognize an inmate's work performance or productive participation in specified correctional programs by granting performance pay.

[49 FR 38915, Oct. 1, 1984, as amended at 61 FR 379, Jan. 4, 1996]

§ 545.21 Definitions.

(a) *Physically and mentally able.* For purposes of this rule, this shall include inmates with disabilities who, with or without reasonable accommodation, can perform the essential function of the work assignment.

(b) *Institution work assignment.* A work assignment which contributes to the day-to-day operation of the institution (e.g., carpentry, plumbing, food service).

(c) *Industry assignment.* A Federal Prison Industries (FPI) work assignment.

(d) *Commissary assignment.* A Trust Fund work assignment.

(e) *Full-time work assignment.* A work assignment to which an inmate is assigned for the entire scheduled work day.

(f) *Part-time work assignment.* A work assignment to which an inmate is assigned for only a portion of the scheduled work day. Part-time work assignments are ordinarily made in conjunction with drug treatment programming, education, and/or vocational training programs.

(g) *Medically unassigned.* An inmate who, because of medical restrictions, is unable to be assigned to any work program.

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(h) *Light duty work assignment.* A work assignment in which an inmate may, because of physical limitations, temporary or otherwise, only perform limited work functions, e.g., sedentary work, no prolonged standing, no lifting over 25 lbs., etc.

[49 FR 38915, Oct. 1, 1984, as amended at 61 FR 379, Jan. 4, 1996]

§ 545.22 Institution work and performance pay committee.

(a) The Warden at each Bureau of Prisons institution is to establish an Institution Inmate Work and Performance Pay Committee to administer the institution's work and performance pay program. The Committee is to be comprised of an Associate Warden, the Inmate Performance Pay Coordinator, and any other member(s) the Warden considers appropriate.

(b) The Committee is responsible for approving the following aspects of the institution's inmate work and performance pay program:

(1) Number of inmates on each work detail;

(2) Number of pay grades in each detail;

(3) Job descriptions;

(4) Performance standards;

(5) Budgeting for special act awards; and

(6) Bonus pay/special bonus pay procedures.

§ 545.23 Inmate work/program assignment.

(a) Each sentenced inmate who is physically and mentally able is to be assigned to an institutional, industrial, or commissary work program. Exception shall be made to allow for inmate participation in an education, vocational, or drug abuse treatment program, on either a full or part-time basis, where this involvement is mandated by Bureau policy or statute (for example, the Literacy Program). Where such participation is not required by either policy or statute, exception may be made to allow an inmate to participate in an education, vocational, or drug abuse treatment program rather than work full-time upon the request of the inmate and approval of the Warden or designee.